

Government in the Sunshine Refresher

Florida Commission on Hurricane Loss Projection
Methodology

May 22, 2017

Constitutional requirement:

Article I, section 24(b), Florida Constitution

(b) **All meetings of any collegial public body** of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, **at which official acts are to be taken or at which public business of such body is to be transacted or discussed**, shall be **open and noticed to the public** ..., except with respect to meetings exempted pursuant to this section or specifically closed by this Constitution.

Statutory requirement:

Section 286.011(1), Florida Statutes

(1) **All meetings of any board or commission of any state agency or authority** or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution ... **at which official acts are to be taken are declared to be public meetings open to the public at all times**, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting. The board or commission must provide reasonable notice of all such meetings.

Statutory exception for Methodology Commission: Section 627.0628(3)(g), Florida Statutes

(g)1. A **trade secret**, as defined in s. 688.002, which is **used in designing and constructing a hurricane or flood loss model and which is provided pursuant to this section, by a private company, to the commission, office, or consumer advocate appointed pursuant to s. 627.0613 is confidential and exempt** from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

2.a. **That portion of a meeting of the commission or of a rate proceeding on an insurer's rate filing at which a trade secret made confidential and exempt by this paragraph is discussed is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.** The closed meeting must be recorded, and no portion of the closed meeting may be off the record.

When does the Sunshine Law apply to the FCHLPM?

- The Sunshine Law applies any time two or more members of a collegial body such as the Commission discuss some matter that foreseeably will come before the body (including administrative matters).
- The Sunshine Law may also apply to a de facto meeting, such as a situation where a staff member or third party is used as a liaison or go-between.
 - However, the Sunshine Law is not triggered by traditional staff functions, such as providing information or analysis.

Can Commission members communicate with each other in writing under the Sunshine Law?

- It would be a violation for Commission members to evade the Sunshine Law by using a series of written communications to “discuss” a matter they’re prohibited from discussing outside of a public meeting.
- For example, it would be a Sunshine violation to circulate a proposal and receive responses or comments from Commission members, but...
 - A Commission member may provide a written report or statement to other members on a subject that will be discussed at a public meeting, provided that there is no interaction regarding the report or statement among Commission members prior to the public meeting.
 - Although there is no clear ruling on the subject:
 - Any such written report or statement should be provided to all Commission members, if at all.
 - The Attorney General’s Office “strongly discourages” a situation where each of several Commission members circulates his or her own report or statement.

How does the Sunshine Law affect electronic communications among Commission members?

- Commission members may not take action or engage in private discussions of Commission business by email, text message, or other electronic means.
 - Private telephone calls between members to discuss Commission business would also violate the Sunshine Law.
 - Although there are no rulings on the subject, the same principle would presumably apply to use of social media.

How does the Sunshine Law affect informal communication between Commission members?

- The Sunshine Law applies to any gathering, including informal situations, in which two or more Commission members discuss any matter on which foreseeable action will be taken by the Commission.
- Commission members may meet together socially, provided there is no discussion of matters that may come before the Commission.
- Although there is no ruling on the subject, the same principle would presumably apply to business meetings.

How does the Sunshine Law affect sidebar communications?

- If a discussion between two or more Commission members is not audible to the entire Commission and the public, the openness requirement of the Sunshine Law is violated.
 - While these whispered sidebar communications are common in the context of legislative meetings, stricter requirements apply to boards and commissions.

Trade Secret Closed Sessions

- The ability of the Commission to hold a closed meeting to discuss trade secrets is an exception to the general Sunshine Law requirement of open public meetings, and is to be applied narrowly.
 - Discussion of non-trade-secret matters should take place in the public portion of the meeting.
 - Any discussion between two or more Commission members of a particular modeling organization's trade secret matters outside the context of the closed portion of the Commission meeting on that modeling organization's model would be a violation of the Sunshine Law and also a potential violation of trade secret laws.